

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ROBERT ANDREW KIRKHAM,

Plaintiff,

v.

BRANDON GLOOR et al.,

Defendants.

CASE NO. 2:22-cv-01637-LK

ORDER ADOPTING REPORT AND
RECOMMENDATION

This matter comes before the Court on the Report and Recommendation (“R&R”) of Magistrate Judge David W. Christel, recommending dismissal without prejudice of pro se Plaintiff Robert Andrew Kirkham’s complaint filed under 42 U.S.C. § 1983. Dkt. No. 11; *see* Dkt. No. 4. The R&R further recommends denying as moot Mr. Kirkham’s pending motion for appointed counsel, Dkt. No. 5, and that dismissal of this case count as a “strike” against Mr. Kirkham under 28 U.S.C. § 1915(g) because Mr. Kirkham’s complaint is being dismissed, at least in part, on the ground that it fails to state a claim. Dkt. No. 11 at 2; *see* Dkt. No. 6 at 2–3. Mr. Kirkham, who is proceeding *in forma pauperis*, has not filed any objections to the R&R. Indeed, the record indicates that he was released from Snohomish County Corrections Center in December 2022 and has since

failed to update his mailing address in contravention of Local Civil Rule 41(b)(2) and despite Judge Christel's January 6, 2023 Order directing him to do so. *See* Dkt. Nos. 7–10, 12; Dkt. No. 11 at 1–2. Mr. Kirkham has also failed to timely file an amended complaint curing his deficient pleadings in accordance with Judge Christel's November 28, 2022 Order. Dkt. No. 6 at 4.

The Court reviews findings and recommendations “*if objection is made*, but not otherwise.” *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc) (emphasis original) (“Neither the Constitution nor the statute requires a district judge to review, de novo, findings and recommendations that the parties themselves accept as correct.”); *see also* 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3).

Having reviewed the R&R and the remainder of the record, and in the absence of any objections by Mr. Kirkham, the Court hereby finds and ORDERS:

1. The Court ADOPTS the Report and Recommendation, Dkt. No. 11.
2. This case is DISMISSED without prejudice.
3. Mr. Kirkham's Motion for Court-appointed counsel is DENIED as moot, Dkt. No. 5.
4. This dismissal constitutes a strike against Mr. Kirkham under 28 U.S.C. § 1915(g). *See Lomax v. Ortiz-Marquez*, 140 S. Ct. 1721, 1724–25 (2020); *Andrews v. King*, 398 F.3d 1113, 1121 (9th Cir. 2005).
5. The Clerk is directed to send copies of this Order to Mr. Kirkham and to Judge Christel.

Dated this 3rd day of April, 2023.



Lauren King
United States District Judge